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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Kashane Kirk, *et al.*,

Plaintiffs,

vs.

City of Phoenix, *et al.*,

Defendants.

Case No.: CV 23-00836-MTL (CDB)

**DEFENDANTS' ANSWER TO
PLAINTIFFS' THIRD AMENDED
COMPLAINT**

For their Answer to Plaintiffs' Third Amended Complaint ("the Complaint") [Doc. 63], Defendants City of Phoenix (the "City"), Chief Michael Sullivan, Autumn Ladines, Officer Antonio Garza, and Sergeant Eric Roy (collectively, "Defendants"), by and through counsel undersigned, admit, deny, and generally allege as follows:

INTRODUCTION

1. In response to the first sentence of the Introduction to the Complaint, Defendants deny that any Defendant used unlawful, wrongful, or improper force.

2. In response to the second sentence of the Introduction to the Complaint, Defendants deny that the Phoenix Police Department ("PPD") or the City of Phoenix ("the City") have or employ any unconstitutional practices, long-standing or otherwise.

1 3. In response to the third and fourth sentences of the Introduction to the
2 Complaint, Defendants do not have sufficient knowledge or information to form a belief about
3 the truth of the allegations stated therein and deny them.

4 **JURISDICTION AND VENUE**

5 4. In response to ¶ 1 of the Complaint, Defendants admit that such is the stated
6 purpose of the Complaint but deny any implication that the Complaint states a valid claim or
7 that Defendants are liable to Plaintiffs for any such damages.

8 5. In response to ¶ 2 of the Complaint, Defendants admit.

9 6. In response to ¶ 3 of the Complaint, Defendants admit that Plaintiffs assert
10 certain claims arising out of the U.S. Constitution but deny that the Complaint alleges
11 minimum facts sufficient to maintain that claim as necessary to justify original jurisdiction in
12 this Court pursuant to 28 U.S.C. § 1331 or supplemental jurisdiction over the state law claims
13 pursuant to 28 U.S.C. § 1367(a).

14 7. In response to ¶ 4 of the Complaint, Defendants admit.

15 8. In response to ¶ 5 of the Complaint, Defendants admit that the alleged acts and
16 omissions occurred primarily in Maricopa County, Arizona but deny that this Court's
17 jurisdiction is governed by Article 6, Section 14 of the Arizona Constitution.

18 9. In response to ¶ 6 of the Complaint, Defendants admit.

19 **PARTIES**

20 10. In response to ¶¶ 7 through 12 of the Complaint, Defendants do not have
21 sufficient knowledge or information to form a belief about the truth of the allegations stated
22 therein and deny them.

23 11. In response to ¶ 13 of the Complaint, Defendants admit that the City, as a
24 municipality, can only act through its agents and employees.

25 12. In response to ¶ 14 of the Complaint, Defendants admit that Chief Sullivan ("the
26 Chief") was the duly appointed Chief of Police, primary policymaker of the PPD, and

1 operated as an agent of PPD when acting in his official capacity during the relevant period.

2 13. In response to ¶¶ 15 through 17 of the Complaint, Defendants admit these
3 defendants were employed by PPD in the stated capacities and acting in the course and scope
4 of that employment during the relevant period.

5 14. In response to ¶¶ 18 through 20 of the Complaint, these Defendants were
6 dismissed from the lawsuit, and thus, are not proper parties to this case.

7 15. As to ¶ 21 of the Complaint, the allegation is not a concise and direct statement
8 of fact. It does not require a response and Defendants offer none or, to the extent required,
9 deny.

10 16. In response to ¶ 22 of the Complaint, Defendants deny.

11 17. In response to ¶¶ 23 and 24 of the Complaint, Defendants admit the named
12 defendants were employed by PPD and acting in the course and scope of that employment
13 during the relevant period.

14 18. In response to ¶¶ 25 through 27 of the Complaint, Defendants deny.

15 **BACKGROUND**

16 19. In response to ¶ 28 of the Complaint, Defendants admit that the U.S.
17 Department of Justice (“DOJ”) opened an investigation in November 2021 but deny that a
18 relevant pattern or practice of unconstitutional action exists within PPD and further deny any
19 implication that that the allegation has been or will be substantiated. Defendants affirmatively
20 allege that the investigation was closed and that the DOJ retracted any findings of
21 constitutional violations.

22 20. In response to ¶ 29 of the Complaint, Defendants deny receiving suggestions
23 “[a]s a result of the [USDOJ] investigation,” which has since closed and any findings from
24 the investigation have since been retracted.

25 21. In response to ¶¶ 30 through 33 of the Complaint, Defendants deny that PPD
26 has or had a policy, pattern, or practice of using excessive force during the relevant period or

1 any other systemic operational failure and deny that Plaintiffs possess or can produce contrary
2 evidence.

3 22. In response to ¶ 34 of the Complaint, Defendants admit that PPD began revising
4 and updating its Use of Force Policy in January 2023 and continued to solicit feedback on the
5 revised Use of Force Policy. Defendants deny that the existence of a closed and rescinded
6 DOJ investigation evidences a policy, pattern, or practice of “violent, racially-motivated
7 tactics” or other systemic failure.

8 23. In response to ¶ 35 of the Complaint, Defendants deny.

9 24. In response to ¶ 36 of the Complaint, Defendants admit Chief Sullivan was hired
10 as Chief of Police for PPD in September 2022 in the context of the ongoing DOJ investigation;
11 however, that investigation has since closed and the DOJ’s initial findings have been
12 rescinded.

13 25. In response to the first sentence of ¶ 37 of the Complaint, Defendants admit that
14 one component of the DOJ’s review was of PPD policies and practices is to “assess all types
15 of use of force . . . including deadly force”; however, the investigation is closed.

16 26. In response to the second sentence of ¶ 37 of the Complaint, Defendants admit
17 that PPD is periodically subject to civil lawsuits and protest activity but deny that these
18 circumstances evidence a policy, pattern, or practice of misconduct or other systemic failure.

19 27. In response to the third sentence of ¶ 37 of the Complaint, Defendants deny.

20 28. In response to ¶¶ 38 through 44 of the Complaint, Defendants note that the link
21 Plaintiffs provide is to a document dated January 2023 and clearly marked “DRAFT” on each
22 page. Defendants admit that the referenced January 2023 draft revised Use of Force Policy
23 contains the provisions identified in these paragraphs. Defendants deny that a revised Use of
24 Force Policy has been finalized and further deny that the January 2023 draft revised Use of
25 Force Policy is the most current version. Defendant affirmatively alleges that the language
26 contained in the draft speaks for itself.

1 convenience store at North 37th Avenue and McDowell in the late afternoon of November 2,
2 2022. Defendants do not have sufficient knowledge or information to form a belief about the
3 truth of the remaining allegations stated therein and deny them.

4 37. In response to ¶ 87 of the Complaint, Defendants do not have sufficient
5 knowledge or information to form a belief about the truth of the allegations stated therein and
6 deny them.

7 38. In response to ¶ 88 of the Complaint, Defendants admit Mr. Kirk was at a
8 convenience store at North 37th Avenue and McDowell in the late afternoon of November 2,
9 2022.

10 39. In response to ¶ 89 of the Complaint, Defendants admit Mr. Kirk can be seen
11 interacting with multiple people outside the convenience store on surveillance camera video
12 taken on November 2, 2023.

13 40. In response to ¶¶ 90 and 91 of the Complaint, Defendants admit Mr. Gonzalez-
14 Rios entered the convenience store on November 2, 2023. Defendants do not have sufficient
15 knowledge or information to form a belief about the truth of the allegations stated therein and
16 deny them.

17 41. In response to ¶¶ 92 and 93 of the Complaint, Defendants admit.

18 42. In response to ¶¶ 94 and 95 of the Complaint, Defendants admit Mr. Gonzalez-
19 Rios was observed holding a gun while sitting on a motorcycle outside the convenience store.
20 Defendants do not have sufficient knowledge or information to form a belief about the truth
21 of the remaining allegations stated therein and deny them.

22 43. In response to ¶ 96 of the Complaint, Defendants admit video surveillance
23 depicts a person pushing what appears to be a stroller. Defendants do not have sufficient
24 knowledge or information to form a belief about the truth of the remaining allegations stated
25 therein and deny them.

26 44. In response to ¶¶ 97 and 98 of the Complaint, Defendants admit.

1 45. In response to ¶ 99 of the Complaint, Defendants admit that when Mr. Kirk saw
2 Mr. Gonzalez-Rios, he ran around a parked vehicle, then drew and pointed a gun at Mr.
3 Gonzalez-Rios.

4 46. In response to ¶ 100, Defendants lack sufficient evidence to know whether the
5 factual allegations in ¶ 100 is true, and therefore deny the same.

6 47. In response to ¶ 101 of the Complaint, Defendants maintain that the allegations
7 contained in ¶ 101 contain a statement of law, which require neither admission nor denial.

8 48. Defendants lack sufficient evidence to know whether the factual allegation in ¶
9 102 is true, and therefore deny the same.

10 49. In response to ¶ 103 of the Complaint, Defendants admit Mr. Kirk did not have
11 gunshot residue on his hands after the shooting incident, and that based on the information
12 obtained after the incident, he likely did not shoot his weapon.

13 50. In response to ¶ 104 of the Complaint, Defendants deny.

14 51. In response to ¶ 105 of the Complaint, Defendants admit Mr. Kirk did not have
15 gunshot residue on his hands after the shooting incident, and that based on the information
16 obtained after the incident, he likely did not shoot his weapon.

17 **The Helicopter Officers**

18 52. In response to ¶ 106 of the Complaint, Defendants admit that a PPD air unit
19 arrived on scene at 1612 North 37th Avenue at 4:14 p.m. on November 2, 2022.

20 53. In response to ¶ 107 of the Complaint, Defendants deny that Officer Howard
21 piloted the helicopter and deny that Sergeant Ramirez was the spotter. Defendants admit that
22 Officer Ramirez and Sergeant Howard observed a black male later identified as Leontae Kirk
23 exit the store on North 37th Avenue holding a gun, begin to “duck and dodge like he was
24 involved in a shooting . . . like he was shooting or being shot at,” and then walk through the
25 parking lot waving and pointing the gun at the strip mall, before losing sight of him as the
26 helicopter completed its orbit.

1 54. In response to ¶ 108 of the Complaint, Defendants admit PPD dispatch reported
2 an active shooter at North 37th Avenue.

3 55. In response to ¶ 109 of the Complaint, Defendants admit Officer Ramirez had
4 binoculars and could see a black male holding and waving a gun at the North 37th Avenue
5 location. Defendants deny that Officer Ramirez had a visual line of sight for the duration of
6 the relevant period.

7 56. As to ¶¶ 110 through 120, the Court ruled that Plaintiffs failed to state a claim
8 against Officers Howard and Ramirez, and these officers were dismissed from the lawsuit
9 along with Officer Ravelo. Defendants admit that Officer Ramirez and Sergeant Howard
10 observed a black male later identified as Leontae Kirk exit the store on North 37th Avenue
11 holding a gun, begin to “duck and dodge like he was involved in a shooting . . . like he was
12 shooting or being shot at,” and then walk through the parking lot waving and pointing the gun
13 at the strip mall, before losing sight of him as the helicopter completed its orbit. Defendants
14 deny the remaining allegations in these paragraphs – many of which are vague and unclear as
15 to what direct and concise fact is being alleged – and specifically deny the allegation that
16 Officer Ramirez and Sergeant Howard, who are no longer proper parties to this lawsuit, acted
17 wrongfully or are otherwise responsible for Plaintiffs’ alleged damages.

18 **False and Deadly Information**

19 57. As to ¶ 121 of the Complaint, this is not a concise and direct statement of fact.
20 It does not require a response and Defendants offer none or, to the extent required, deny.

21 58. In response to ¶¶ 122 through 123 of the Complaint, Defendants deny that
22 information regarding Mr. Kirk’s whereabouts and activities was received via 9-1-1 call and
23 civilian reports and further deny the generalization that information from these sources is
24 inherently flawed.

25 59. As to ¶ 124, the statements are vague and unclear as to what concise and direct
26 fact is being alleged and Defendants deny same.

1 60. In response to ¶ 125 of the Complaint, Defendants admit a witness made this
2 statement during the investigation that followed the shooting incident.

3 61. In response to ¶¶ 126 and 127 of the Complaint, Defendants admit Mr. Kirk did
4 not have gunshot residue on his hands after the shooting incident but deny that a witness
5 reporting truthfully about what he or she perceived can be characterized as “one hundred
6 percent false.”

7 62. In response to ¶ 128 of the Complaint, Defendants deny.

8 63. As to ¶ 129 of the Complaint, this statement is vague and unclear as to what
9 concise and direct fact is being alleged and Defendants deny same.

10 64. In response to ¶¶ 130 through 132 of the Complaint, Defendants admit Mr. Kirk
11 was observed waving and pointing a gun in a busy strip mall parking lot. Defendants deny
12 the remaining allegations of these paragraphs– some of which are vague and unclear as to
13 what direct and concise fact is being alleged.

14 65. In response to ¶ 133 of the Complaint, Defendants admit Mr. Kirk was observed
15 waving and pointing a gun in a busy strip mall parking lot. Defendants do not have sufficient
16 knowledge or information to form a belief about the truth of the remaining allegations stated
17 therein and deny them.

18 66. In response to ¶ 134 of the Complaint, Defendants deny.

19 **Humberto Gonzalez-Rios**

20 67. In response to ¶¶ 135 through 137 of the Complaint, Defendants deny.

21 68. In response to ¶¶ 138 and 139 of the Complaint, Defendants admit Mr. Kirk is
22 a black man who captured PPD officers’ attention by waving and pointing a gun in a busy
23 strip mall parking lot. Defendants deny the remaining allegations in these paragraphs.

24 69. In response to ¶¶ 140 and 141 of the Complaint, Defendants admit this summary
25 of Mr. Gonzalez-Rios’s statements appears in the PPD incident report.

26 70. In response to ¶ 142 of the Complaint, Defendants admit Mr. Gonzalez-Rios’s

1 report of the incident, given six hours after its conclusion, is inconsistent with other evidence.
2 Defendants do not have sufficient knowledge or information to form a belief about the truth
3 of the remaining allegations stated therein and deny them.

4 71. In response to ¶¶ 143 through 146, Defendants admit Mr. Gonzalez-Rios pulled
5 a gun from his waistband and pointed it at the ground in Mr. Kirk's presence. Defendants do
6 not have sufficient knowledge or information to form a belief about the truth of the remaining
7 allegations stated therein and deny them.

8 72. As to ¶ 147 of the Complaint, the statement is vague and unclear as to what
9 concise and direct fact is being alleged and Defendants deny same.

10 73. In response to ¶ 148 of the Complaint, Defendants admit Mr. Gonzalez-Rios
11 was observed sitting on a motorcycle whose VIN number did not match its presentation.

12 74. In response to ¶ 149 of the Complaint, Defendants do not have sufficient
13 knowledge or information to form a belief about the truth of the allegations stated therein and
14 deny them.

15 75. In response to ¶ 150 of the Complaint, Defendants admit that Mr. Gonzalez-
16 Rios reported that Mr. Kirk shot at least one time into the air and this report, which report is
17 inconsistent with other evidence.

18 76. In response to ¶¶ 151 and 152 of the Complaint, Defendants are without
19 sufficient information to admit or deny Plaintiffs' characterization of the facts as alleged in
20 these paragraphs, and thus, deny the same.

21 77. In response to ¶ 153 of the Complaint, Defendants admit Mr. Gonzalez-Rios
22 left the scene of the shooting incident before law enforcement officers arrived. Defendants do
23 not have sufficient knowledge or information to form a belief about the truth of the remaining
24 allegations stated therein and deny them.

25 78. In response to ¶ 154 of the Complaint, Defendants admit Mr. Kirk died after a
26 shooting incident involving PPD officers. do not have sufficient knowledge or information to

1 form a belief about the truth of the remaining allegations stated therein and deny them.

2 **Officers on the Ground**

3 79. As to ¶ 155 of the Complaint, the statement is vague and unclear as to what
4 concise and direct fact is being alleged and Defendants deny same.

5 80. In response to ¶¶ 156 and 157 of the Complaint, Defendants deny.

6 81. In response to ¶ 158 of the Complaint, the court dismissed Plaintiffs' failure to
7 intervene claim, and thus, ¶ 158 neither requires admission nor denial; however, to the extent
8 a response is required, Defendants deny ¶ 158.

9 82. In response to ¶ 159, Defendants maintain that the allegations contained in ¶
10 159 are sufficiently vague such that they can neither admit or deny the allegations contained
11 therein. Nonetheless, Defendants admit that at some point, Mr. Kirk ditched his firearm under
12 a vehicle in the parking lot.

13 83. In response to ¶¶ 160 through 162, the court dismissed Plaintiffs' failure to
14 intervene claim, and thus, these paragraphs neither require admission nor denial because
15 Officers Ravelo, Ramirez, and Howard are no longer a proper party to this lawsuit; however,
16 to the extent a response is required, Defendants deny ¶¶ 160 through 162.

17 84. In response to ¶¶ 163 through 167, Defendants maintain that the allegations
18 contained in these paragraphs are sufficiently vague as to when the allegations occurred such
19 that neither an admission nor denial is possible. Defendants admit that once the officers
20 arrived at the scene, Mr. Kirk was still armed and fled on foot between two vehicles in the
21 parking lot and was out of the officers vision for a period of time.

22 85. In response to ¶ 168, Defendants admit that Officers Roy, Ladines, and Garza
23 fired their service weapons during the incident.

24 **Sergeant Roy**

25 86. In response to ¶ 169 of the Complaint, Defendants admit Sergeant Roy carries
26 the rank of sergeant but deny that this rank affects the duties imposed by federal and state law.

1 87. In response to ¶ 170 of the Complaint, Defendants admit Sergeant Roy fired his
2 weapon seventeen times during the shooting incident. Defendants deny the remaining
3 statements in this paragraph and further deny the suggestion that his rank as sergeant affects
4 the duties imposed by federal and state law.

5 88. In response to ¶ 171 of the Complaint, the statement is vague and unclear as to
6 what concise and direct fact is being alleged and Defendants deny same.

7 89. In response to ¶¶ 172-174 of the Complaint, Defendants admit that Sergeant
8 Roy used force on prior occasions before the incident involving Mr. Kirk, however,
9 Defendants expressly deny that these allegations are dispositive on any claim against
10 Defendants.

11 90. In response to ¶ 175 of the Complaint, Defendants admit Officer Ladines fired
12 her weapon four times, and Officer Garza fired her weapon three times during the shooting
13 incident. Defendants deny the remaining statements and characterizations set forth in this
14 paragraph.

15 91. In response to ¶ 176 of the Complaint, Defendants deny. The contents of the
16 report speak for itself.

17 92. In response to ¶ 177 of the Complaint, Defendants admit.

18 93. In response to ¶¶ 178 and 179 of the Complaint, Defendants admit the
19 circumstances unfolded quickly and in a manner that warranted immediate response but deny
20 Plaintiffs' characterization of the facts depicted in the video footage, and deny that
21 Defendants' actions related to the shooting incident were unreasonable, unconstitutional, or
22 otherwise subject them to liability for Plaintiffs' alleged damages.

23 94. In response to ¶¶ 180 through 184, Defendants admit civilians were entering
24 and exiting the convenience store and strip mall parking lot throughout the shooting incident.

25 95. In response to ¶ 185 of the Complaint, Defendants admit this summary of
26 Sergeant Roy's observations and recollection appears in the PPD incident report.

1 96. As to ¶ 186 of the Complaint, the statements are vague and unclear as to what
2 concise and direct fact is being alleged and Defendants deny same.

3 97. In response to ¶¶ 187 through 189 of Complaint, Defendants deny Plaintiffs'
4 characterization of the facts depicted in the video footage.

5 98. In response to ¶ 190 of the Complaint, Defendants deny that any defendant had
6 a duty and/or reasonable opportunity to intervene or prevent the shooting incident.

7 99. In response to ¶¶ 191 and 192 of the Complaint, Defendants admit the
8 circumstances unfolded quickly and in a manner that warranted immediate response but deny
9 Plaintiffs' subjective characterization of the events, deny that any defendant had a duty and/or
10 reasonable opportunity to intervene or prevent the shooting incident, and deny that
11 Defendants' actions related to the shooting incident were unreasonable, unconstitutional, or
12 otherwise subject them to liability for Plaintiffs' alleged damages.

13 100. As to ¶ 193 of the Complaint, the statements are vague and unclear as to what
14 concise and direct fact is being alleged and Defendants deny same.

15 101. In response to ¶ 194 of the Complaint, Defendants admit that after the shooting
16 Officer Ladines observed a 13-year-old girl in the back passenger area of a nearby Dodge
17 pick-up truck.

18 102. In response to ¶¶ 195 through 197 of the Complaint, Defendants admit a
19 witness, Diana Flores Ochoa, observed the shooting incident from inside a Dodge Ram pickup
20 truck parked in the strip mall parking lot and that Ms. Flores Ochoa saw a person run out of
21 the convenience store. Defendants deny the remaining allegations in these paragraphs.

22 103. In response to ¶¶ 198 through 200 of the Complaint, Defendants admit the
23 circumstances unfolded quickly and in a manner that warranted immediate response and admit
24 PPD identified 11 possible bullet holes in vehicles and buildings around the location of the
25 shooting incident. Defendants deny that all were caused by bullets and further deny any bullet
26 holes are causally related to the shooting incident. Defendants deny the remaining statements

1 in these paragraphs and specifically deny that Defendants' actions related to the shooting
2 incident were unreasonable, unconstitutional, or otherwise subject them to liability for
3 Plaintiffs' alleged damages.

4 104. In response to ¶ 201 of the Complaint, Defendants admit the circumstances
5 unfolded quickly and in a manner that warranted immediate response. Defendants deny the
6 remaining allegations in this paragraph and specifically deny that Defendants' actions related
7 to the shooting incident were unreasonable, unconstitutional, or otherwise subject them to
8 liability for Plaintiffs' alleged damages.

9 **Officer Ladines**

10 105. In response to ¶¶ 202 through 208 of the Complaint, Defendants admit Ladines
11 reported these experiences and observations during an interview after the shooting incident
12 but deny Plaintiff's subjective characterization of the video footage.

13 106. As to ¶ 209 of the Complaint, the statements are vague and unclear as to what
14 concise and direct fact is being alleged and Defendants deny same.

15 107. In response to ¶ 210 of the Complaint, Defendants admit this summary of
16 Officer Ravelo's observations and recollection appears in the PPD incident report.

17 108. In response to ¶ 174 of the Complaint, Defendants do not have sufficient
18 knowledge or information to form a belief about the truth of the allegations stated therein.

19 109. As to ¶¶ 212 and 213 of the Complaint, Defendants deny.

20 110. In response to ¶¶ 214 and 215 of the Complaint, Defendants deny.

21 111. In response to ¶¶ 216 and 217 of the Complaint, Defendants admit this summary
22 of Officer Ladines's observations and recollection appears in the PPD incident report.

23 112. In response to ¶ 218 of the Complaint, Defendants admit Officer Ladines
24 reported that she believed she told the subject to respond.

25 113. In response to ¶ 219 of the Complaint, Defendants deny Plaintiffs'
26 characterization of the facts depicted in video footage.

1 114. In response to ¶ 220 of the Complaint, Defendants admit Officer Ladines
2 reported shooting approximately five rounds in Mr. Kirk's direction during the shooting
3 incident.

4 115. In response to ¶ 221 of the Complaint, Defendants deny.

5 116. In response to ¶¶ 222 and 223 of the Complaint, Defendants admit.

6 117. In response to ¶ 224 of the Complaint, Defendants deny.

7 118. In response to ¶¶ 225 through 227 of the Complaint, Defendants admit certain
8 officers gave commands to Mr. Kirk and that when he did not comply Officer Ladines fired
9 one non-lethal round to test for compliance. Defendants deny the remaining allegations of this
10 paragraph.

11 119. In response to ¶¶ 228 through 230 of the Complaint, Defendants deny.

12 120. In response to ¶ 231 of the Complaint, Defendants admit.

13 121. As to ¶ 232 of the Complaint, Defendants deny.

14 122. In response to ¶¶ 233 and 234 of the Complaint, Defendants deny.

15 123. In response to ¶ 235 of the Complaint, Defendants admit.

16 124. In response to ¶ 236 of the Complaint, Defendants admit that after the shooting
17 Officer Ladines observed a girl who appeared about 13 years old in the back passenger area
18 of a nearby Dodge pick-up truck.

19 125. In response to ¶ 237 of the Complaint, Defendants admit Officer Ladines stated
20 she fired her weapon at Mr. Kirk because she believed he was actively firing a weapon, in
21 public and at an occupied structure and she thought it was necessary to protect civilians and
22 other offices. Defendants deny the remaining allegations of this paragraph.

23 126. In response to ¶ 238 of the Complaint, Defendants admit.

24 **Officer Ravelo**

25 127. In response to ¶ 239 of the Complaint, Defendants admit this summary of
26 Officer Ravelo's observations and recollection appears in the PPD incident report.

128. In response to ¶ 240 of the Complaint, Defendants admit that all people have choices but deny that Defendants' actions related to the shooting incident were unreasonable, unconstitutional, or otherwise subject them to liability for Plaintiffs' alleged damages.

129. In response to ¶¶ 241 through 242 of the Complaint, Defendants admit this summary of Officer Ravelo's observations and recollection appears in the PPD incident report.

130. In response to ¶¶ 243 through 251 of the Complaint, the Court dismissed Officer Ravelo from this lawsuit, and thus, Officer Ravelo is no longer a proper party to this litigation, and thus, to the extent the allegations contained in these paragraphs are against Officer Ravelo, neither admission nor denial is required. To the extent a response is required, Defendants admit Officer Ladines fired her service weapon as vaguely alleged in ¶ 247. Defendants deny the remaining allegations in ¶¶ 243 through 251.

131. In response to ¶ 250 of the Complaint, Defendants deny that any defendant had a duty and/or reasonable opportunity to intervene or prevent the shooting incident.

132. In response to ¶ 251 of the Complaint, Defendants deny.

Officer Garza

133. In response to ¶¶ 252 through 255 of the Complaint, Defendants admit this summary of Officer Garza's observations and recollection appears in the PPD incident report, except that Defendants are without sufficient information to admit or deny whether Leontae ever fired a bullet, and thus, Defendants deny the same.

134. In response to ¶ 256 of the Complaint, Defendants deny.

135. In response to ¶ 257 of the Complaint, Defendants admit this summary of Officer Garza's observations and recollection appears in the PPD incident report.

136. In response to ¶ 258 of the Complaint, Defendants admit that all people have choices but deny that Defendants' actions related to the shooting incident were unreasonable, unconstitutional, or otherwise subject them to liability for Plaintiffs' alleged damages.

1 137. In response to ¶ 259 of the Complaint, Defendants admit that Officer Garza had
2 a scope on his weapon but deny that the intent or purpose of the scope is to “view” a suspect.

3 138. In response to ¶ 260 of the Complaint, Defendants deny.

4 139. In response to ¶¶ 261 and 262 of the Complaint, Defendants admit.

5 140. In response to ¶ 263 of the Complaint, Defendants admit the circumstances
6 unfolded quickly and in a manner that warranted immediate response and admit Mr. Kirk died
7 after the shooting incident involving PPD officers, but deny that Defendants’ actions related
8 to the shooting incident were unreasonable, unconstitutional, or otherwise subject them to
9 liability for Plaintiffs’ alleged damages.

10 **Autopsies and Weapons Used**

11 141. In response to ¶¶ 264 and 265 of the Complaint, Defendants admit this statement
12 appears in the PPD incident report.

13 142. In response to ¶ 266 of the Complaint, Defendants admit that a private autopsy
14 report was prepared, and maintain that the findings contained in any autopsy report speak for
15 itself.

16 143. In response to ¶¶ 267 of the Complaint, Defendants admit.

17 144. In response to ¶ 268 of the Complaint, Defendants are without sufficient
18 information to admit or deny the allegations contained in ¶ 268, and thus, deny the same.

19 145. In response to ¶¶ 269 and 270 of the Complaint, Defendants admit.

20 146. In response to ¶¶ 271 through 277 of the Complaint, Defendants admit this
21 information is contained in the PPD incident report.

22 **The Aftermath**

23 147. In response to ¶ 278 of the Complaint, Defendants admit that Officers Roy,
24 Garza, and Ladines remained employed by PPD after the incident. Defendants deny the
25 remaining statements in this paragraph and specifically deny that Defendants’ actions related
26 to the shooting incident were unreasonable, unconstitutional, or otherwise subject them to

1 liability for Plaintiffs' alleged damages.

2 148. In response to ¶ 279 of the Complaint, Defendants maintain that any records
3 regarding disciplinary leave, which are already in Plaintiffs' possession, speak for themselves.

4 149. In response to ¶¶ 280 and 281 of the Complaint, Defendants deny.

5 150. In response to ¶ 282 of the Complaint, Defendants admit the circumstances
6 unfolded quickly and in a manner that warranted immediate response and that certain officers
7 gave commands to Mr. Kirk after the shooting incident. Defendants deny the remaining
8 statements in this paragraph.

9 151. In response to ¶ 283 of the Complaint, Defendants deny.

10 152. In response to ¶¶ 284 through 286 of the Complaint, Defendants admit PPD
11 officers remained concern with the location of Mr. Kirk's weapon. Defendants deny the
12 remaining statements in these paragraphs.

13 153. In response to ¶ 287 of the Complaint, Defendants admit that certain officers
14 gave commands to Mr. Kirk after the shooting incident. Defendants do not have knowledge
15 or information to form a belief about the truth of the remaining allegations stated therein and
16 deny them.

17 154. In response to ¶ 288 of the Complaint, Defendants admit Ladines made
18 statements that were captured on her body cam footage consistent with those alleged in this
19 paragraph.

20 155. In response to ¶ 289 of the Complaint, Defendants admit these statements are
21 captured on video footage. Defendants do not have knowledge or information to form a belief
22 about the truth of the remaining allegations stated therein and deny them.

23 156. In response to ¶ 290 of the Complaint, Defendants admit.

24 157. In response to ¶¶ 291 and 292 of the Complaint, Defendants do not have
25 sufficient knowledge or information to form a belief about the truth of the allegations stated
26 therein, which contain no temporal or other parameters, and deny them.

158. In response to ¶ 293 of the Complaint, Defendants deny.

159. In response to ¶¶ 294 through 305 of the Complaint, Defendants admit that an investigation report was issued to Chief Sullivan on or around December 4, 2023, and that the report speaks for itself. Defendants deny any allegations, especially any conclusory statements or speculative allegations, related to the contents of the report that are not supported by the report.

160. In response to ¶ 306 of the Complaint, Defendants deny.

161. In response to ¶ 307 of the Complaint, Defendants admit that Officers Roy, Ladines, and Garza remained employed after the incident. The remaining allegations are sufficiently vague such that Defendants cannot adequately respond to those allegations, and thus, Defendants deny.

162. In response to Paragraph 308 of the Complaint, Defendants deny.

COUNT I

**WRONGFUL DEATH AND SURVIVAL ACTION PURSUANT TO A.R.S. § 12-611,
et seq. and A.R.S. § 14-3110**

(City, Sullivan)

163. In response to ¶ 309 of the Complaint, Defendants incorporate the admissions, denials, objections, and explanations in the foregoing paragraphs as though fully set forth herein.

164. As to ¶¶ 310 and 311 of the Complaint, the allegations are not a concise and direct statement of fact. They do not require a response and Defendants offer none or, to the extent required, deny.

165. In response to ¶¶ 312 and 313 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief about the truth of the allegations stated therein, which contain no temporal parameters, and deny them. Defendants recognize that Sharon Roberts may have standing to pursue the claim alleged in Count I.

1 179. In response to ¶¶ 362 through 364 of the Complaint, Defendants deny.

2 180. In response to ¶ 365 of the Complaint, Defendants admit the PPD officers were
3 employed by PPD and acting in the course and scope of that employment during the relevant
4 period but deny that Defendants' actions related to the shooting incident were unreasonable,
5 unconstitutional, or otherwise subject them to liability for Plaintiffs' alleged damages.

6 181. In response to ¶¶ 366 through 369 of the Complaint, Defendants deny.

7 182. In response to ¶ 370 of the Complaint, Defendants admit.

8 183. In response to ¶ 371 of the Complaint, Defendants maintain that the existence
9 of a duty is a legal determination, and thus, Defendants can neither admit nor deny ¶ 371.
10 Defendants maintain that to the extent any duty applied to them under Arizona law, they
11 complied with that duty.

12 184. In response to ¶¶ 372 and 373 of the Complaint, Defendants deny.

13 185. In response to ¶ 374, Defendants are presently unaware of how much time
14 passed from when Mr. Kirk was shot to when he received medical attention; however, this
15 information is likely available in the body cam footage.

16 186. In response to ¶ 375, Defendants maintain that the allegations contained in this
17 paragraph are argumentative, conclusory, and sufficiently vague such that neither an
18 admission nor denial is possible. To the extent a response is required, Defendants deny ¶ 375.

19 187. In response to ¶ 376, Defendants admit a 40mm non-lethal weapon was shot at
20 Mr. Kirk.

21 188. In response to ¶ 377, Defendants maintain that the allegations contained in this
22 paragraph are argumentative, speculative, and sufficiently vague such that neither a response
23 nor a denial is possible. To the extent a response is required, Defendants deny ¶ 377.

24 189. In response to ¶¶ 378 through 381 of the Complaint, Defendants deny.

25 ///

COUNT VI**NEGLIGENT HIRING, SUPERVISION, RETENTION, AND/OR TRAINING*****(Sullivan, City)***

190. In response to ¶ 382 of the Complaint, Defendants incorporate the admissions, denials, objections, and explanations in the foregoing paragraphs as though fully set forth herein.

191. As to ¶ 383 of the Complaint, the allegation is not a concise and direct statement of fact. It does not require a response and Defendants offer none or, to the extent required, deny.

192. In response to ¶ 384 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief about the truth of the allegations stated therein, which contain no temporal or other parameters, and deny them.

193. In response to ¶ 385 of the Complaint, Defendants admit the DOJ opened an investigation in November 2021 but deny that the investigation has or will reveal any misconduct in PPD's hiring and training processes.

194. In response to ¶¶ 386 and 387 of the Complaint, Defendants deny.

195. In response to ¶ 388 of the Complaint, Defendants admit PPD officers are trained to perform their essential functions.

196. In response to ¶ 389 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief about the truth of the allegations stated therein, which contain no temporal or other parameters, and deny them.

197. In response to ¶ 390 of the Complaint, Defendants deny.

198. In response to ¶¶ 391 and 392 of the Complaint, Defendants deny receiving suggestions "[a]s a result of the USDOJ investigation," which is still ongoing. Defendants further deny the remaining allegations of these paragraphs.

199. In response to ¶ 393 of the Complaint, Defendants deny that Plaintiffs

1 accurately report the substance and content of Chief Sullivan's observations and further
 2 denies that Chief Sullivan's focus on improvement within PPD evidences liability for
 3 Plaintiff's alleged damages.

4 200. In response to ¶ 394 of the Complaint, Defendants deny.

5 **DEMAND FOR JURY TRIAL**

6 Defendants hereby demand a jury trial on all triable issues.

7 **GENERAL DENIAL & AFFIRMATIVE DEFENSES**

8 201. Defendants deny each and every other allegation of the Complaint not
 9 specifically admitted herein, and deny that Plaintiffs are entitled to punitive damages,
 10 attorneys' fees or any of the other relief sought in their Complaint and prayer for relief.

11 202. As affirmative defenses to the claims set forth in the Complaint, Defendants
 12 allege as follows:

- 13 a. Failure to state a claim upon which relief may be granted;
- 14 b. Statute of limitations;
- 15 c. Comparative fault;
- 16 d. Absolute immunity;
- 17 e. Qualified immunity;
- 18 f. Common law immunity;
- 19 g. Reasonable suspicion/probable cause;
- 20 h. Justification pursuant to Arizona statutory law;
- 21 i. No policy, custom, or practice existed;
- 22 j. Even if a policy, custom, or practice existed, it was not the moving
 23 force behind any alleged constitutional violation;
- 24 k. Plaintiffs' alleged injuries were not caused by any alleged policy,
 25 custom, practice;
- 26

- 1 l. Immunity from punitive damages under state and/or federal law;
- 2 m. Failure to mitigate damages;
- 3 n. Any allegation related to the DOJ investigation should be stricken from
- 4 the record because the investigation was terminated and the DOJ's
- 5 preliminary findings were rescinded;
- 6 o. Plaintiffs' damages are not reasonable, certain, or foreseeable; and,
- 7 p. Estoppel.

8 Defendants further reserve the right to assert such further affirmative defenses as may be
9 supported by matters discovered hereafter.

10 WHEREFORE, Defendants respectfully request the Court dismiss Plaintiffs'
11 Complaint in its entirety and award Defendants their costs incurred and any other relief just
12 and proper under the circumstances.

13 RESPECTFULLY SUBMITTED this 30th day of July, 2025.

14 BROENING OBERG WOODS & WILSON, P.C.

15
16 By /s/ Jeremiah M. Sullivan

17 Sarah L. Barnes

18 Kelley M. Jancaitis

19 Jeremiah M. Sullivan

20 *Attorney for Defendants City of Phoenix,*
21 *Sullivan, Ladines, Garza, Roy, Makic, Ravelo,*
22 *Ramirez, Howard, Traylor, and Reddy*
23
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, I electronically transmitted the foregoing with the Clerk of the Court using the CM/ECF system for filing, with copies submitted electronically to the following recipients:

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